

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

APACE COMMUNICATIONS, INC.,

Plaintiff,

DECISION AND ORDER

07-CV-6151L

v.


JEFFREY BURKE, et al.,

Defendants.

There being little activity in this case for many months, the Court issued an ORDER TO SHOW CAUSE on April 6, 2010 as to why the case should not be dismissed pursuant to Local Rule 41.2 for failure to prosecute. Plaintiff's counsel responded (Dkt. ##140, 147) and submitted an affidavit from plaintiff's principal, Rakesh Aggarwal.

Although the affidavit of Aggarwal is rather vague as to the reasons for past lack of action, there appears to be a present resolve to move forward. Apparently, plaintiff's counsel feels sanguine about plaintiff's ability to fund the litigation. We will see. Counsel has articulated a plan of action and I note that a scheduling conference is now set before United States Magistrate Judge Marian W. Payson in July 2010. In light of the above, I decline to dismiss the action at this time, but will continue to monitor the case.

IT IS SO ORDERED.



DAVID G. LARIMER

United States District Judge

Dated: Rochester, New York
June 22, 2010.